

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Terri Pechner-James and
Sonia Fernandez
Plaintiff

C.A. #03-1249MLW

V

City of Revere et al
Defendants.

SCANNED

DATE: 4-14-05

BY: [Signature]

Motion to Compel Production of Documents
and Request for Sanctions Pursuant to Fed. R. Civ. P. 37(a)2

Now comes the Plaintiffs, Terri Pechner-James and Sonia Fernandez, and move this Honorable Court to Compel the Defendants, City of Revere, Thomas Ambrosino, Mayor and the Revere Police Department, Terrence Reardon, Chief, to Produce the Documents which they have deliberately refused to provide as stated in **Exhibit A**. Failure to disclose or produce materials requested in discovery can constitute misconduct under the procedural rules. See Gonsalves v City of New Bedford, 168 F.R.D at 115. The Plaintiffs state the following in support of their motion:

1. The Plaintiffs pursuant to Fed. R. Civ. P. 26 served the Defendants, City of Revere, Thomas Ambrosino, Mayor and Terrence Reardon, Chief of Revere Police Department with a Request for Production of Documents.
2. The Requests were numbered one through eleven (1 through 11). The Defendants have refused to produce any documents.
3. The Defendants failed to cooperate with discovery. Their response included the following statement: "The documents, to the extent they exist, will not be produced." The Defendants repeated this statement eleven (11) times.

4. The first line of all of the Defendant's responses reads as follows: "Objection. This request is irrelevant and not reasonably calculated to lead to the discovery of relevant or admissible information."

5. This statement is disingenuous. The Defendants knew that this statement was patently false at the time they made the response to Plaintiffs request. This response constitutes a cover-up. See Gonsalves v City of New Bedford, 939 F. Supp. 915.

6. The Plaintiffs ask the Court to take judicial notice of the fact that the total compensation of police officers consists of basic salary, overtime and income from paid detail work. The income from overtime and paid detail work often exceeds the basic salary. **See Attached Exhibit B-Boston Globe Article.**

7. The Plaintiffs hereby certify that prior to serving the Request for Production of Documents, they, by their counsel, attempted to confer and to secure the documents by sending a letter to both counsels for Defendants.

8. The attorney for the police officers, Edward Reardon, P.C. responded by letter confirming that the City of Revere and the Revere Police Department were the parties to whom our "informal request" for discovery was directed. Plaintiffs confirmed that they had already directed the Request to the proper parties. **See Attached Exhibit C**

9. Counsel for the City of Revere and the Revere Police Department did not confer, attempt to confer or in any way respond to the Plaintiffs informal request for discovery.

10. The Plaintiffs then sent a formal Request for Production of Documents. The Defendants were defiant. They provided no documents. The final statement in each of their eleven (11) responses stated: "The documents, to the extent they still exist, will not be produced."

11. The documents requested are relevant to the issue of damages and to liability. Withholding them constitutes a cover-up and the court cannot calculate the full measure of Plaintiffs lost income without these disclosures.

WHEREFORE, the Plaintiffs request:

1. That the Court strike the answers that the Defendants provided in **Exhibit A**;
2. Compel the Defendants to provide the Plaintiffs with the documents requested and any other related documents;
3. Award Plaintiffs counsel reasonable attorneys fees and expenses incurred in the preparation, serving and filing of this motion;
4. Such other relief as the Court deems just and proper.

Terri Pechner-James
Sonia Fernandez
By her attorneys



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CERTIFICATE OF SERVICE

I, Carlton J. Dasent Esq., Attorney for the Plaintiffs, hereby certify that I have, this day served a copy of the attached Motion to Compel Production of Documents and Request for Sanctions Pursuant to Fed. R. Civ. P. 37(a)(2) on the parties listed below by mailing to them postage prepaid at the addresses listed below:

Walter H. Porr, Esq.
Paul Capizzi, Esq.
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Michael Akerson, Esq.
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Dated: 4-11-05